IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2489 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARMISTA A CHAUHAN

Versus

DEALER SELECTION BOARD (AHMEDABAD)

Appearance:

MR K.S. JHAVERI for Petitioner

MR GN SHAH for Respondent No. 1

NANAVATY ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/07/2000

C.A.V. JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has challenged the decision of the respondent Indian Oil Corporation awarding dealership for distribution of LPG gas to respondent No. 3.

2. Indian Oil Corporation (hereinafter referred to as the Corporation or respondent Corporation) had issued advertisement (Annexure-B) which was published in newspaper dated 17.5.1998 inviting applications for LPG dealership in various categories and for various districts including the LPG dealership for Baroda District which was reserved for women. Last date for submitting application was 15.6.1998. Respondent No. 3 and others applied in response to the advertisement for the aforesaid dealership in Baroda District which was reserved for women. Interviews were held by the Dealer Selection Board on 12.2.1999. Dealer Selection Board recommended name of respondent No. 3 for the dealership. The petitioner has thereupon filed present petition in April, 1999 challenging the decision of the respondent Corporation in accepting recommendation of the Dealer Selection Board.

3. While issuing notice on 9.4.1999 this Court restrained the respondent Corporation from finalising the distributorship of LPG by the respondent Corporation in favour of respondent No. 3. In response to the notice, affidavit in reply dated 15.7.1999 has been filed by V.K. Chaudhary, Sr. Area Manager of the respondent Corporation and also affidavit dated 9.9.1999 has been filed by respondent No. 3. Affidavit-in-rejoinder dated 11.10.1999 and additional affidavit dated 23.6.2000 have been filed by the petitioner.

4. In the reply affidavit on behalf of the Corporation procedure for awarding dealership is narrated. It is mentioned that the constitution of the Dealer Selection Board is as under:

(i) A retired High Court Judge or retired District Judge - Chairman

(ii) An officer not below the rank of Chief Manager of one concerned Oil Company - Member

(iii) An Officer of the rank of Chief Manager of another Oil Company - Member.

It is further stated that the Chairman of the Board is appointed by the Government and the members are nominated by the Oil Companies. The Ministry of Petroleum in consultation with Oil Industry, formulates marketing plans laying down the locations, towns/areas for petrol pumps/LPG Agencies/Kerosene LDO Agencies to be

established in various states by Oil Companies. The Oil Companies based on these plans formulated by the Ministry, advertise in local newspapers inviting applications for various dealership / distributorship. The applications are scrutinised and forwarded by the concerned Oil Company to the Dealer Selection Board which conducted interviews and thereafter the Chairman of the Dealer Selection Board sends recommendation of the selected candidates in the order of merit in sealed envelopes to the concerned Oil Company which thereafer conducts the field investigations to verify the accuracy of the factual data given by the candidate who is on Merit Panel No. 1. If the candidate is found eligible as a result of field investigation report, the Oil Company issues letter of intent in favour of the candidate.

It is further contended in the reply affidavit that the procedure adopted by the Dealer Selection Board and the relevant norms etc. being applied by Dealer Selection Board have been upheld by the Courts in various judgements and it has also been held that this Court would not sit in appeal over the recommendation of the Dealer Selection Board. Reliance is also placed on the decision dated 5.12.1985 in Special Civil Application No. 6060 of 1985 wherein it is held that what type of evidence would be acceptable as sufficient proof for adjudging the eligibility criteria is within the domain of Dealer Selection Board. Reliance is also placed on the decision dated 19.11.1997 of this Court in L.P.A. No. 1056 of 1996 (Indian Oil Corporation Ltd. Vs. Shri Jadavji Dhanjibhai Parmar).

It is further pointed out in the reply affidavit that the respondent Corporation had issued public advertisement inviting application for LPG dealership at Bharuch on 31.12.1997 under open category reserve for women only. The last date for submission of the completed applications was 16.2.1998 which was subsequently extended upto 15.6.1998. The applications received were forwarded to the Dealer Selection Board which held interview on 12.2.1999. It is further contended that it is entirely for the Dealer Selection Board to decide as to the qualifications, criteria and making of the selection on merits and merely because a candidate is called for interview would not automatically make him/her eligible for the dealership, nor does it confer a right on him/her to obtain the said dealership. After the Dealer Selection Board recommended merit panal in which respondent No. 3 was ranked first, the field investigation in respect of respondent No. 3 was carried

out for verifying the accuracy of the factual data given by respondent No. 3. The field investigation did not reveal any discrepancy or contradictions to the factual data stated in the application form of respondent No. 3. Therefore, a letter of intent was issued to respondent No. 3 on 4.3.1999. It is further submitted that the allegation of the petitioner that the income of respondent No. 3 did not exceed gross amount of Rs. 2 lakh, which is one of the criteria to be considered for selection, was not found to be true.

Affidavit in reply dated 15.7.1999 has also been filed by K.R. Thakkar, Non-Member Secretary of the Dealer Selection Board. It is stated that the Dealer Selection Board had considered all the applications on merit and had objectively taken the final decision and thereafter the Dealer Selection Board had recommended merit panel dated 12.2.1999 to the respondent Corporation. The allegations made in the petition are denied and it is stated that the entire selection procedure is completed by the Dealer Selection Board absolutely in accordance with the guidelines prescribed by the Ministry and selection is made entirely on merits. It is further stated that during the course of interview the Dealer Selection Board takes everything into consideration including educational qualification and other extracurriculum along with other papers produced with the application.

5. Respondent No. 3 in her affidavit dated 9.9.1999 has denied the allegations and pointed out that respondent No. 3 is a widow and that her husband passed away on 10.3.1991 and that she is receiving family pension. She was serving as a teacher in a primary school but she has left the service since 28.2.1999 and that even during her service, being an untrained teacher, her salary was only Rs. 1350/- per month. The allegation made by the petitioner that the annual income of respondent No. 3 exceeds Rs. 2 lakhs is totally denied. As regards, the agricultural land referred to by the petitioner, it is stated that the land in question was an ancestral property of her husband but she does not enjoy the fruits of the land as there are many common ancestrals in the small piece of land and that according to Muslim Personal Law, the widow is not entitled to the ancestral property of her husband if her husband dies prior to the death of her father-in-law.

6. In the additional affidavit dated 23.6.2000 the petitioner has alleged that the total income of respondent No. 3 is as under:

(a) Agricultural income Rs. 70,000/-
(b) Pension income Rs. 19,872/-
(c) Salary income Rs. 16,200/-
(d) Interest income from FDs Rs. 16,000/-
interest from SB A/c. Rs. 3,097/-
(e) Income from other sources Rs. 20,000/-

Total Rs.1,45,169/-
==========

7. At the hearing of this petition Mr. K.S. Jhaveri, learned counsel for the petitioner urged that respondent No. 3 had made a false statement in her application and she had not disclosed everything in her application and that she had disclosed her income to be only Rs. 35,000/- as against total annual income which is much higher. It is stated that the annual income disclosed by respondent No. 3 against column No. 6 (professional) was Rs. 15,000/- and against column No. 9 (income from other sources) Rs. 20,000/- but she had not disclosed any income from salary, property, interest, dividend, business vocational or agriculture. Learned counsel also invited the attention of the Court to various terms and conditions which were mentioned in the application format particularly condition No. 1 which read as under:-

"If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to be incorrect or false, his/her application is liable to be rejected without assigning any reason and in case he/she has been appointed as a dealer/distributor, his/her dealership / distributorship is liable to be terminated. In such cases, the candidate/dealer/distributor shall have no claim whatsoever against the Oil Company."

Moreover, reference is made to page 12 of the application Form against the following particulars:

"If the income is `Nil' in respect of any of the columns, it should be specifically stated and under no circumstances, any of the columns should be left blank.

The income will include income from all sources

such as salary, property, interest, dividend, business/profession/vocation, agriculture and other sources, if any.

If the applicant is an Income-tax Assessee, the details of income as shown in the Annual income declaration should conform to those indicated in the income-tax return for the relevant financial year and the Assessment Order of the Income-tax Officer thereon.

(a) Gross salary: A certificate from the employer (s) indicating the total emoluments paid.

(b) Income from property: Rent as declared and assessed for the purpose of tax.

(c) Interest on Bank Deposits: Letter from Bank(s) showing the actual amount paid/ credited as interest.

(d) Income from business / profession / vocation / shares & other investments/other sources:

Certificate from Chartered Accountant in support of the income indicated under each of these heads will be required. The applicant may also be required to produce any other documentary proof in support of the income indicated.

10. What is your present occupation? Please give precise details chronologically after passing the last examination from the School/University. If employed, please indicate clearly whether in a temporary or permanent position or self employed. Please give full details.

11. Do you have business / selling experience? If yes, give full details chronologically.

12. Do you have experience of supervision of personnel? If yes, give full details chronologically.

It is submitted that on the one hand the application of respondent No. 3 was required to be dismissed by the IOC for suggestio falsi and suppressio

veri and on the other hand the petitioner is a physically handicapped woman whose annual income is only Rs. 40,000/- and, therefore, she should have been given preference.

8. The learned counsel for the respondent Corporation has submitted that no allegations are made against the Dealer Selection Board and that the Dealer Selection Board has objectively considered all the candidates on merits and found respondent No. 3 to be most suitable candidate and that there is no dispute about eligibility of respondent No. 3; hence the Court may not interfere with the decision of the respondent Corporation in issuing a letter of intent to respondent No. 3. Over and above the decisions referred to in the reply affidavit, reliance is also placed on the decision dated 25.8.1999 of this Court in Spl. C.A. No. 2043 of 1999.

9. The learned counsel for respondent No. 3 has also supported the respondent Corporation and submitted that ex-parte ad-interim stay granted since April 1999 operates harshly against respondent No. 3 and the same may be vacated at the earliest. It is submitted that in any case, even as per the case of the petitioner the annual income of respondent No. 3 does not exceed Rs. 2 lakhs. Hence, there cannot be any dispute about eligibility of respondent No. 3. Regarding the alleged income earned from agricultural land, the submissions made in the reply affidavit are reiterated.

10. Having heard learned counsel for the parties, the Court is of the view that since there are no allegations against the Dealer Selection Board which had considered the case of the petitioner as well as respondent No. 3 and since the validity of the procedure has been upheld by this Court in various decisions and when the eligibility of respondent No. 3 does not appear to be under serious doubt, there is very little scope for judicial review, as the Court does not sit in appeal over the decision of the Dealer Selection Board in awarding LGP dealership.

11. Mr. Jhaveri for the petitioner has heavily dwelt on non-disclosure of her income by respondent No. 3 from salary or income from interest on bank deposits for which separate columns were mentioned in the application.

Since the total annual income of respondent No. 3 does not exceed Rs. 2 lakhs and since respondent No.

3 is a woman, there is no dispute about her eligibility. In fact, it is not in dispute that respondent No. 3 is a widow and, therefore, she is entitled to preference as mentioned in the advertisement. The only question is whether she had made any such incorrect statement in the application which would disqualify her as mentioned in condition No. 1 in the application form.

It is unfortunate that while the petitioner has said so much about the alleged concealment of income by respondent No. 3, the deponent of affidavit filed on behalf of the respondent Corporation as well as the deponent of affidavit on behalf of the Dealer Selection Board have chosen not to give any particulars except stating that the field investigation report did not

respondent No. 3 in her application.

12. The particulars given by respondent No. 3 in her application dated 12.2.1998 were as under:-

Plese give details of income of the last financial year (19)
(To be attached with Appendix A)
(Gross income should be indicated and not net income)

DETAILS OF GROSS ANNUAL INCOME IN RUPEES

Relation-ship	Gross salary	Property	Interest	Dividend	Business	Prof.	Vocational	Agri.	Income from other sources	Total
1. Self	-									
2. Wife/ Husband										
3. Dependant children										

It is true that respondent No. 3 did not mention any amount in the column for gross salary, though her salary income was Rs. 1350/- per month till she was in service with a primary school in question that is upto

28.2.1999. It is also true that respondent No. 3 did not disclose her income from interest on FDRs. However, respondent No. 3 mentioned in the income declaration that her professional income was Rs. 15,000/- and her other income was Rs. 20,000/- aggregating to Rs. 35,000/-. As far as agricultural incomeis concerned, it is under serious dispute for which detailed reference may be made to the submissions made by respondent No. 3 in her affidavit. Even ignoring the said alleged agricultural income, the income of respondent No. 3 at the relevant time appears to be about Rs. 75,000/- as against income of Rs. 35,000/- disclosed in her statement. In fact, though she has been consistently stating that her total income is Rs. 35,000/- respondent No. 3 has been vague in not pointing out as to whether the income of Rs. 20,000/- mentioned in the residuary column covers salary and interest income. If that income from other sources (Rs. 20,000/-) is attributed to other heads like pension, salary and interest, it appears that the total income of responent No. 3 is about Rs. 55,000/- as against income of Rs. 35,000/mentioned in the application. There appears to be some discrepancy in the income disclosed by respondent No. 3 in her application and the income which appears to have accrued to respondent No. 3. The question is whether there is such discrepancy that this Court should quash the decision of the respondent Corporation in favour of respondent No. 3.

13. Though this Court might have passed an order for remanding the matter to the respondent Corporation for fresh investigation and might have directed the respondent Corporation and the Dealer Selection Board to consider whether the applicant had made any false statement in the application, this Court does not propose to adopt that course in view of the following facts:

(i) Admittedly, respondent No. 3 is a woman and her income is less than Rs. 2 lakhs per year and therefore there is no dispute about her eligibility.

(ii) Admittedly respondent No. 3 is a widow and therefore is entitled to preference.

(iii) Respondent No. 3 appears to have been ill-advised in mentioning income against column of professional income and residuary income when she could have easily mentioned her income against the heads of salary, interest etc.

(iv) The ex-parte ad-interim injunction against grant of distributorship in favour of respondent No. 3 has been operating since April, 1999 i.e. almost one year and 3 months. The matter could not be heard for no fault of respondent No. 3.

14. Hence at this stage the Court is not inclined to interfere with the impugned decision of the respondent Corporation or even to remand the matter, but it would be worthwhile to impress upon the respondent Corporation and the Dealer Selection Board that while holding interviews and making field investigation the candidate/s should be required to clearly disclose her/his income from all relevant sources specifically so that any occasion for misunderstanding or making allegations such as are made in the present petition, does not arise. It is also necessary to make these observations so that everytime the Indian Oil Corporation does not flaunt composition of the Dealer Selection Board as an invincible defence when the selected candidate has made incorrect statements; the shortcomings of the field investigation may not be shielded by the Corporation in the name of the Chairman of the Dealer Selection Board. In fact, it would be open to the Dealer Selection Board initially to prepare the merit panel on a tentative basis and to make the final recommendation after requiring the Oil Company to submit to the Dealer Selection Board the field investigation report/s in respect of more than one candidate.

15. Subject to the aforesaid observations, the petition is dismissed. Notice is discharged. Ad-interim injunction granted earlier is vacated. However, the Court does not award any costs in favour of the respondent Corporation or respondent No.. 3 as the Court is not satisfied that respondent No. 3 had disclosed the income accurately in the income declaration form nor is the Court satisfied that the respondent Corporation had carried out field investigation in the manner in which it was required to be carried out. However, the petition is dismissed for the reasons which are already indicated above.

(M.S. SHAH, J)

At this stage, the learned counsel for the petitioner prays that the ad-interim injunction granted earlier may be continued for some time in order to enable the petitioner to have further recourse in accordance with law.

Hence, the ad-interim injunction granted earlier shall continue till 7.8.2000.

July 28, 2000 (M.S. Shah, J.)

(pkn)